IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 797 of 1998

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

CHHAGANBHAI GOVINDBHAI PATEL DECD.THRO'HEIRS &REP. - Petitioner(s)

Versus

AMBALAL SHANKARBHAI JADHAV - Respondent(s)

==========

Appearance :

MR NILESH A PANDYA for Petitioner No(s).: 1.

MR SHAKIL S SHAIKH for Respondent No(s).: 1.

==========

CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 24/06/2005

ORAL JUDGMENT

1. By filing instant petition under Section 115 of the Code of Civil Procedure, the petitioner seeks to challenge the order dated 7.4.1998 recorded below Ex.4 in Rent Suit No.274 of 1992 by the learned Additional Judge, Small Causes Court, Vadodara, by which the application filed by the petitioner to implead him as heir and legal representative of deceased Chhaganbhai Govindbhai Patel/ original plaintiff has been dismissed as it was not filed within the stipulated time limit of 90 days.
2. Chhaganbhai Govindbhai Patel, father of the petitioner had instituted Regular Civil Suit No. 481 of 1981 before the learned Civil Judge (J.D.)., Vadodara against the respondent claiming decree of eviction of the suit premises on the ground of arrears of rent. The said suit came to be decreed by the learned Civil Judge (J.D.)., Vadodara.
3. Aggrieved by the said order passed by the learned Civil Judge (J.D.)., Vadodara, the respondent filed Regular Civil Appeal No. 198 of 1984 before the District Court, Vadodara.
4. During the pendency of the said appeal, Chhaganbhai Govindbhai Patel died on 26.4.1991 and therefore the petitioner filed application to bring him on record of the appeal as the heir and legal representative of deceased Chhaganbhai Govindbhai Patel, which came to be allowed and the present petitioner was brought on record of the appeal.

1. The learned District Judge, after hearing the parties, reached to the conclusion that Civil Judge (J.D.)., Vadodara had no jurisdiction to decide the suit as the dispute was with regard to right of tenancy and remanded the matter to the Small Causes Court, Vadodara.

1. Before the Small Causes Court, Vadodara, the said suit was renumbered as Rent Suit No.274 of 1992 and on 13.7.1992 the petitioner submitted an application to bring him on record as the heir and legal representative of original plaintiff Chhaganbhai Govindbhai Patel who has died on 26.4.1991 by contending that in the appeal before the District Court, Vadodara also he was brought on record as heir and legal representative of deceased Chhaganbhai Govindbhai Patel/original plaintiff. The Small Causes Court, Vadodara has rejected the said application which has given rise to the present revision application at the instance of the heir and legal representative of the original plaintiff.

2. Having heard Mr. Nilesh Pandya, learned advocate of the petitioner and Mr. Shakil Shaikh, learned advocate of the respondent and on perusal of the impugned order, according to this Court, the learned Additional Judge of the Small Causes Court, Vadodara has misdirected himself by saying that the application Ex.4 submitted by the petitioner was not within time. The petitioner was already on record before the appellate forum which has remanded the suit to the Small Causes Court, Vadodara. Therefore, the learned Additional Judge of the Small Causes Court, Vadodara ought to have allowed the said application as the petitioner has immediately approached the Small Causes Court, Vadodara after the matter was remanded to the Small Causes Court, Vadodara by the District Court, Vadodara.

3. In aforesaid view of the matter, the impugned order does not stand to scrutiny which deserves to be quashed and set aside by allowing the application Ex.4 in Rent Suit No.274 of 1992 and thereby permitting the present petitioner to bring him on record of the Rent Suit No.274 of 1992 in place of the original plaintiff Chhaganbhai Govindbhai Patel who has died on 26.4.1991.

1. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The impugned order dated 7.4.1998 recorded below Ex.4 in Rent Suit No.274 of 1992 by the learned Additional Judge of the Small Causes Court, Vadodara is hereby quashed and set aside, the effect of which is that the application Ex.4 filed by the present petitioner in Rent Suit No.274 of 1992 stands allowed and the petitioner herein is permitted to implead himself as heir and legal representative of deceased Chhaganbhai Govindbhai Patel/ original plaintiff in Rent Suit No.274 of 1992. Rule is made absolute.

2. The trial Court to expedite the Rent Suit No. 274 of 1992.

(A.M. Kapadia, J.)

...

(karan)